

Debbie Bartuccio

From: Dan Bowers <danbowers1@yahoo.com>
Sent: Wednesday, February 20, 2019 12:08 AM
To: Debbie Bartuccio
Subject: SB-168
Attachments: Opposition - Short.doc; Opposition - Short.pdf

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2-19-19

Honorable Senate Committee members Due to the fact that after the proponents of SB-168 were done talking only 1 of the 6-7 persons opposing the Bill got to testify for maybe a very hurried 3 minutes AND since most of these opponents are small 1-2 man businesses and may likely not be able to reschedule to be in Topeka a 2nd time tomorrow AND with the weather also up in the air for them I have combined many of their comments for you.

I am currently the President and Education director for the Heartlands Regional Chapter of InterNACHI. I have also done the same service for the ASHI chapters in Kansas. We have 124 members belonging to InterNACHI, ASHI and non-affiliated inspectors. We have discussed this in great detail at our quarterly meetings and #1 - Do not support this Bill and #2 - Want to emphasize that the KAREI group does not speak for anyone but themselves and that is only about 4-5 inspectors in the state

I have attached a summary of our opposition in both a pdf file and a word doc whichever you prefer.

Sincerely,

Dan Bowers

Opposition & Facts Regarding / Senate Bill SB-168

Submitted to the Kansas Senate Committee 2-20-19 by
Dan Bowers, CMI, ACI, CRI

Commerce Committee chair Senator Julia Lynn and senate committee members. My name is Dan Bowers and I am a Building Consultant. I am the owner of Holmes Inspections. Residential, Commercial and Environmental Inspections, Stucco Moisture testing, Expert Witness type consulting and Training of Inspectors, Realtors, Appraisers and Consumers has been my primary profession for most of my adult life. I started inspecting homes in 1976 while being a construction supervisor for a large volume home builder. In 1984 I went into inspection full time.

I grew up in a construction family in Kansas City and over the past 50 yrs I have been active in home building, building inspections, real estate appraisal, and have been a licensed real estate broker. One of my degrees is in Real Estate which means I have about 10x more actual education in real estate than the 30 hrs that a typical Kansas real estate agent has. This gives me a perspective of being able to look at this licensing Bill from all sides and comment accordingly.

- We have attempted to be polite & professional but there is so much misleading, false or inaccurate information or half truths That I feel it's past time to discuss them.
- Licensing or trying to control home inspectors is **NOT** a Kansas thing - it's been a long range legislative goal set by the NAR (national association of Realtors) in 2000 - 2001.
- The Realtors excuse is to help protect the public and insure minimal educational levels and skill sets of home inspectors, etc. In actuality past studies by various state or national entities show that with OR without licensing It did NOT change inspectors skill set.
- Although the commissioned house sales force in Kansas says **THEY** want to protect the public **AND** insure minimal educational levels, **ETC** In a state with **NO** state wide licensure of tradesmen like builders, electricians, plumbers, builders (the people who make the mistakes home inspectors find) **NOR** a state wide building code **OR** code enforcement (20 Kansas counties out of about 105 have mandatory codes) **YOU** have **NEVER** seen the **REALTORS** make a push to try and **HELP** the public that way.
- Realtors state they have worked with the state home inspectors developing this Bill. In fact in 2008-2009 Kansas had 3 NATIONAL home inspector associations with members in Kansas (NAHI, ASHI, InterNACHI) and 2 STATE inspector associations (KAREI and KARCI). Although any of these association members could come & testify at a Bill hearing **ONLY** a few members of the **KAREI / ASHI** group had any contact with writing or developing the Bill. (KAREI portrays being a Kansas state association **BUT** during their **14-15 years** of existence **HAVE** been **FULLY** controlled and **RUN** by several **ASHI** members). To **REITERATE** no **OTHER** home inspection group had any part of drafting **OR** writing a Bill **Bill SB-168** pushed now in **2019** is the same way **ONLY** the **KAREI / ASHI** group were aware of it **OR** had **ANY** part of it. Think about a Bill regulating **SOMETHING** for the entire car industry **BUT** only **Chrysler** having a seat at the table **OR** being involved in this regulation.
- After the Bill was passed in 2008-2009 and a regulating Board established .. The **ONLY** **Association** having seats on the Board was the **KAREI/ASHI** group.
- **Association Bias** The manner in which the 2008-2009 Bill (HB-2260) was written, mis-managed and enforced was biased toward 1 inspection group **KAREI / ASHI.**
- **Limitation of Liability clauses** can be a deterrent for **frivolous home inspection claims** in jurisdictions where they are enforced. However, they are not a **Get-Out-of-Jail-Free card**. Nor are they a substitute for General Liability or Errors and Omissions Insurance. **Why?** For starters, as mentioned above, they don't stop a buyer, seller or any other party

from suing an inspector. **MOST** home inspection lawsuits are **multi-defendant affairs**, and it is a very small task for an attorney to throw a home inspector into the pot, no matter whether there is a **Limitation of Liability** clause or **NOT**.

- **Claim Categories 2% Meritorious / 98% Unmeritorious** due to reasons like: Outside our SoP; it was Concealed; it was Disclaimed; Discovered BUT client did not follow up; it was functional at the inspection THEN it broke, quit, etc; OR someone in the deal talked them out of NEGOTIATING for repair or replacement OR having further evaluation done OR downplayed the concern (wonder who that is many times).
- **Everybody** in the real estate transaction is licensed / regulated except a home inspector. This comment shows gross incompetence or ignorance of the varied parties in the real estate process. Who is **NOT** state licensed a builder, remodeler, chimney inspector, roof inspector, mold inspector, sewer line inspector, HVAC technician, electrician, asbestos inspector, foundation contractor, plumber, infrared inspector, etc, etc.
- It is my honest belief that many home inspectors **JUST** like doctors, lawyers, etc carry liability and errors & omissions insurance as a good business practice **AND** to protect ourselves from frivolous litigation, sue happy clients **OR** the unforeseen accident. In Kansas we did **NOT** find other professions (real estate agents, engineers, architects, lawyers, appraisers, termite inspectors, doctors **OR** others) that to gain a license were **REQUIRED** to carry E&O insurance. **BUT** the real estate agents want to make home inspectors carry something like that as a **PREREQUISITE** to getting a license.
- In Kansas the Executive Director of the State Board of Technical Professions (engineers and architects, etc) has stated in writing that 1 & 2 Family Dwellings or Agricultural Buildings are EXEMPT from the practice of engineering and architecture and the service we described (home inspections) do NOT fall under their jurisdiction. What that meant in Kansas was in **Kansas City alone** we had over **29 licensed engineers** performing home inspections with **NO** oversight from their Board; **NONE** from the home inspection Board and they had to follow NO state SoP; have no home inspection training; were NOT required to PROVIDE financial surety to get an engineering license; were NOT prevented from limiting their LIABILITY by time OR dollars per their engineer license. We also discovered various engineers that offered inspections with **NO** written report, just a **VERBAL** summary / AND some provided repair work on homes they inspected BOTH practices prohibited in the home inspectors licensing law NOT the engineers.
- One of the **PRIMARY** reasons for licensing in **2008-2009** per the commissioned real estate sales people claims was the hundreds of complaints against home inspectors. At that time 3 of us (myself included) contacted the AG's office, all the BBB's in Kansas and several consumer groups like HADD (homeowners against deficient dwellings) and discovered **only 9 complaints** in the **2 yrs prior to that AND 6 of those were settled amicably.** When Governor Brownback saw fit **4 years later** to rescind the Bill the home inspection Board records indicated they had fielded **less than 7-8 complaints** of the type that would be a strike or censure against someone's home inspection license. Not **ALL** but **MOST** complaints against home inspectors are of the type he took too long; he was too picky; he killed our deal; my 20 yr old A/C unit has always worked just fine but 2 days after the home inspector was here it quit He must have broke it somehow??
- After **4 years of licensing in Kansas** when Governor Brownback carefully decided to rescind licensure we had approximately **166 licensed inspectors.** We did NOT have enough inspectors to AFFORD to have a Board Office, secretary, investigator, etc. We had a **phone mate** in an accountants office in Topeka that **forwarded calls**, etc to one person on the Home Inspection Board in Wichita (a Jeff Barnes). When the Bill was dropped there was approximately **\$63,000 of the home inspectors dues dollars** left in their treasury **It was given to 1 inspection association in Wichita (KAREI).** Since

that time this group controlled by 3-4 ASHI inspectors has had no training, no meetings, no education for the Kansas home inspectors, etc. Most inspectors did not find out their left over dues were given to the KAREI group till several months later. At that point in time inspectors were angry but what are you to do The money was gone.

- In Kansas the educational requirement for many years **to get a real estate license was 30 hrs of class TOTAL** ... Today after new agents are licensed they take another 30 hrs of training their 1st year in business. **That is pathetic** Even a good agent does not have enough training on how to do due diligence **AND properly** handle inspections for their clients. Not all but a large majority of commissioned real estate sales people do what's **EASIEST** for them Instead of finding the **BEST** inspectors (remember these inspectors cost more, typically take longer, **FIND** more problems, and this can cause real estate deals to come apart) Many agents tend to gravitate toward the lower priced inspectors (new or experienced) that are Realtor friendly, don't make many waves and the agents deals go through easier **BUT** if something goes wrong everyone gets hurt. So the **BIG** question is can we do something like Massachusetts has done **AND** prohibit a commissioned real estate agent referring home inspectors **UNLESS** they're a dedicated **BUYERS** agent (not just paying word homage **BUT** a signed on Buyers Agent).
- Some of the issues I've mentioned in my letter have **NEVER** been addressed in a Kansas home inspection licensing BillAnybody still wonder why the Governor rescinded the Home Inspection Bill after 4 yrs.

Regards,

Dan Bowers, CMI, ACI, CRI

Certified Master Inspector, InterNACHI
ASHI Certified Inspector, (Mbr #1038)
Certified Residential Inspector, NAHI
EDI Certified Stucco / EIFS Inspector

FHA Compliance Inspector
Certified IAQ2 Mold Inspector
Certified Commercial Building Inspector
Licensed, WDI / WDO Inspector (inactive)
NAHI - Educator of the Year 2003-2004
ITC / FLIR - Level I Infrared Thermographer
InterNACHI - US Member of the Year 2010
Licensed Septic Inspector / Installer (inactive)
Home Inspection Hall-of-Fame Inductee - 2017
FHA - 203k Inspector / Consultant / Plan Reviewer
Licensed HVAC & Refrigeration Service Technician
Licensed Radon Measurement Technician (Kansas)
President InterNACHI Home Inspectors Chapter
Licensed Contractor / Builder (1 & 2 Family Dwellings)
ASHI - National Board-of-Directors 1993, 1997-1999
Licensed Asbestos Inspector and Air Sampling Professional
Monroe Technology Certified Residential Thermographer (Infrared)
ICC Code Compliance Inspector (Combo, Plmbg, Elec, Mech, Bldg)